

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No.: 1:10-cv-142

L. WALDO MATTHEWS,)	
)	
Plaintiff,)	
)	
v.)	
)	
ENERGIZER HOLDINGS CORP.,)	
)	
Defendant.)	
_____)	

NOTICE OF REMOVAL

Defendant Energizer Holdings Corporation (“Energizer” or “Defendant”) hereby files this Notice of Removal of the above-captioned action from the General Court of Justice, Superior Court Division, State of North Carolina, Guilford County, Case No. 10-CVS-2983, pursuant to 28 U.S.C. §§ 1441 and 1446, on the basis of the facts set forth below:

1. Energizer is the Defendant in the above-captioned civil action filed in the General Court of Justice, Superior Division, State of North Carolina, Guilford County, which is within the District of this Court.

2. The Summons and Complaint were served on Defendant’s registered agent via certified mail on January 22, 2010. This Notice of Removal is being timely filed within thirty (30) days after Defendant’s receipt of the Summons and Complaint.

3. A copy of the Summons and the Complaint are attached hereto as Exhibit 1. No other process, pleadings or orders have been served upon Defendant in this action.

4. Plaintiff's Complaint is premised upon Defendant's alleged failure to provide certain pension benefits to Plaintiff. Specifically, Plaintiff alleges, among other things, that "Defendant has failed and refused to pay plaintiff the pension to which he is entitled on the basis of contracts to which he is a party or of which he is a third party beneficiary. . . ." (Complaint at ¶ 6).

5. Defendant had in effect at all times relevant to the allegations in the Complaint a retirement plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). A copy of the retirement plan in effect at the time of Plaintiff's retirement is attached hereto as Exhibit 2. ERISA provides that the statute "will supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" 29 U.S.C. § 1144(a). Because Plaintiffs' state law claims relate to an ERISA-governed employee benefit plan, ERISA provides the exclusive right of action for such claims. Consequently, this Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331, and this action may properly be removed to this Court pursuant to 28 U.S.C. § 1441.

6. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to Plaintiff, and a copy of this Notice of Removal will be filed

with the Clerk of the General Court of Justice, Superior Court Division, State of North Carolina, Guilford County.

WHEREFORE, Defendant respectfully asks that this action be duly removed to this Court and that it proceed herein.

This 19th day of February, 2010.

/s/ Keith M. Weddington
Keith M. Weddington
N.C. Bar No. 14352
keithweddington@parkerpoe.com

**PARKER POE ADAMS & BERNSTEIN
LLP**

Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: (704) 335-9035
Facsimile: (704) 335-9697

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing “*Notice of Removal*” was served on Plaintiff’s attorney of record in this action via the Court’s CM/ECF electronic case filing system and via first class mail, postage prepaid:

Norman B. Smith
Smith, James, Rowlett & Cohen, LLP
PO Box 990
Greensboro, NC 27402-0990

This the 19th day of February 2010.

/s/ Keith M. Weddington
Keith M. Weddington
N.C. Bar No. 14352

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